

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 23, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref. No.: LODS-28,998

HAWAII

Acceptance of Department of Transportation's (DOT) Grant of Limited Vehicle Access Rights onto the Queen Kaahumanu Highway, Relating to Issuance of Grant of Perpetual, Non-Exclusive Easement (LODS-28,998) to Kona Residence Trust for Access and Utility Purposes at Puuanahulu, North Kona, Hawaii, Tax Map Key: (3) 7-1-003: portion of 002.

BACKGROUND:

At its meeting of December 8, 2006, under agenda item D-7, the Board of Land and Natural Resources approved Grant of Perpetual, Non-Exclusive Easement to the Kona Residence Trust (KRT) for access and utility purposes at Puuanahulu, North Kona, Hawaii, Tax Map Key: (3) 7-1-003: portion of 002. (**Exhibit A**)

In attempting to process DLNR's grant of easement document to KRT, staff was notified by the Department of Accounting and general Services, Survey Section that approval for limited vehicular accesses onto the Queen Kaahumanu Highway was required from the Department of Transportation, Highways Division prior to the easement being granted. An approval of a grant of vehicle access rights from DOT would in turn update DOT's Right-of-Way Maps to authorize the point of permitted vehicular accesses to the highway.

Staff was informed that currently on record, the subject State property has three (3) such permitted vehicular access points to the Queen Kaahumanu Highway, indicated on the DOT Right-of-Way Maps. DOT asked the State if it was willing to relocate one of its existing permitted vehicular access points to the KRT access location. As the other locations permitting vehicle access to the highway from the State property are already in use and located at potential future major intersections, relocation of such access points would not be realistic, nor in the State's best interest. One such location is at the intersection for the Puuanahulu Landfill, mauka of the highway. As a result, staff recommended that if KRT wanted to establish its existing driveway access as a permitted vehicular access point to the Queen Kaahumanu Highway, it would need to negotiate

with the DOT in obtaining an additional vehicle access point for the subject State property. KRT would be responsible to meet the DOT requirements and would be responsible for any expenses, costs, fees, and considerations associated with establishing the vehicle access point.

To date, KRT has paid the Department of Land and Natural Resources \$45,000 for the grant of perpetual, non-exclusive easement over the State property, and is now preparing to pay DOT Highways \$10,000 for the approved access onto the Queen Kaahumanu Highway.


A copy of the Department of Transportation's Grant of Limited Vehicle Access Rights document is attached as **Exhibit B**.


Once the Grant of Limited Vehicle Access Rights is fully executed, staff will proceed with the grant of easement to KRT as authorized in the Board's prior action of December 8, 2006, Item D-7.

RECOMMENDATION:

That the Board accept the Department of Transportation's Grant of Limited Vehicle Access Rights onto the Queen Kaahumanu Highway for establishing an additional driveway from the subject State property.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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Land Division

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSP No.: 06HD-202

HAWAII

Grant of Perpetual, Non-Exclusive Easement to Kona Residence Trust for
Access and Utility Purposes, Puuananahu, North Kona, Hawaii, Tax Map Key:
3rd/ 7-1-03: portion of 2

APPLICANT:

Allen D. Israel, as Trustee of the Kona Residence Trust, under unrecorded Revocable Trust,
dated 12/16/88, whose mailing address is c/o Clifford J. Miller of

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Puuananahu Homestead, Kapalea Section situated at
Puuananahu, North Kona, Hawaii, identified by Tax Map Key: 3rd/ 7-1-03: portion of 2, as
shown on the attached map labeled Exhibit A.

AREA:

1.130 acres, more or less.

ZONING:

State Land Use District: Conservation
County of Hawaii CZO: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered under, Governor's Executive Order No. 4161 to Department of Land and

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 8, 2006

D-7

EXHIBIT A

KRT-Puuanahulu Esmnt
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Natural Resources, Division of State Parks.

CHARACTER OF USE:

For access and utility:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

The existence of the subject roadway predates the creation of the Conservation District.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

By letter dated July 20, 2006, Robert G. Klein, representing the Kona Residence Trust

EXHIBIT A

(KRT), requested a perpetual, non-exclusive easement over State Lands at Puuanahulu, South Kona, Hawaii, Tax Map Key: 3rd/ 7-1-03: portion of 2. Purpose for obtaining the easement is to establish legal accesses for its private properties identified as Tax Map Keys: 3rd/ 7-1-03: 4, 5, 6 and 11. The easement being requested consists of an existing graveled roadway, which was originally constructed and used as a service road for ranching operations over the past fifty years.

Land Patent Grant No. S-14,088, dated August 19, 1963, in conformity with the laws of the State of Hawaii relating to public lands, and pursuant to the provisions of Joint Resolution No. 12, Session Laws of Hawaii 1949, approved on September 1, 1950 by Public Law 746, 81st Congress, 2nd Session (64 Stat. 572), as amended by Public Law 620, 83rd Congress, 2nd Session (68 Stat. 764), and by Public Law 720, 85th Congress (72 Stat. 710), was granted and confirmed unto Nancy Ah Nee, Mrs. Abraham Hepa (aka: Nancy Hepa), Lei Kuanoni, George Alapai, David Alapai, Kilionia (James) Alapai, and Simeon Alapai, as joint tenants. All of the land situate at Kapakaoa, Puuanahulu, in the District of North Kona, Island of Hawaii, bound and described as Lot 39, Puuanahulu Homesteads.

At its meeting of March 12, 1971, Item F-4, the Board approved the issuance of a termed, non-exclusive easement to a Mr. Nat Wolozin, et, al., over the same easement alignment for access purposes to property identified as Tax Map Key: 3rd/ 7-1-03: 5.

At its meeting of March 24, 1972, Item F-5, the Board rescinded its prior actions of 3/12/71, Item F-4, at the request of Mr. Wolozin's attorney. No particular explanations were given for the request to rescind.

At its meeting of June 23, 1972, Item F-6, the Board approved a set aside to the Department of Transportation, Highways Division, for its proposed Keahole to Anaehoomalu Section of the Kailua-Kawaihae Road (now known as the Queen Kaahumanu Highway).

At its meeting of January 25, 2002, Agenda Item D-18, and of April 28, 2006, Item D-7, approved as amended, the Board approved set asides to the Division of State Parks and Division of Forestry and Wildlife over portions of government lands of Puuanahulu and Puuwaawaa for their respective management.

KRT has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments. All respondents had no objections to the request as indicated below:

AGENCIES	COMMENTS
County of Hawai'i	
Parks & Recreation	No comments
Planning	No response
Public Works	No comments

EXHIBIT A

State of Hawai'i	
DHHL	No objections
DLNR- Aquatic Resource	No response
DLNR-DOCARE	No objections
DLNR- Historic Preservation	No response
DLNR- Na Ala Hele	No response
DLNR- OCCL	No response
DLNR- Parks	No objections, see comments
Other:	
Office of Hawaiian Affairs	No response
Puuwaawaa Advisory Committee	No objections, see comments

The Division of State Parks had no objections to the request, but mentioned that Governor's concurrence might be required as the use of the subject roadway is not consistent with the Executive Order issued for park purposes.

The Puuwaawaa Advisory Committee had no objections to the request, but recommended that allowances be made to provide for future potential realignment of the subject roadway to coincide with any developmental plans consistent with its use under Governor's Executive Order No. 4161 for park purposes.

The Department of Hawaiian Home Lands had no objections to the request, but wanted provisions allowing for public beach accesses over the subject roadway.

Prior to the issuance of the grant of easement document, KRT is required to obtain from the Department of Transportation, Right-of-Way Branch, an approval for vehicular accesses onto the Queen Kaahumanu Highway. That any modifications to the existing roadway might require special permits from the Office of Conservation and Coastal Lands and approval of the Governor since the use is not consistent with the Governor's Executive Order.

RECOMMENDATION: That the Board:

- A. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- B. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 7-1-003: 4, 5, 6, and 11, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
- C. Subject to the Applicant fulfilling all of the Applicant requirements listed above,

EXHIBIT A

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December 8, 2006

authorize the issuance of a perpetual non-exclusive easement to Allen D. Israel, as Trustee of the Kona Residence Trust, under unrecorded Revocable Trust, dated 12/16/88, covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 2. Should future development necessitate a relocation of the easement granted, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantee without payment of any monetary consideration, a substitute easement of similar width within reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law;
 3. That the Division of State Parks reserves the right to:
 - a) utilize the subject roadway for the public's use of the Executive Order area;
 - b) demand a realignment of the existing roadway, if necessary, to be consistent with any proposed master plans for development of the adjoining State property under Executive Order No. 4161.
 4. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Keys: 3rd/ 7-1-03: 4, 5, 6, and 11, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsuhaga
Acting District Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

EXHIBIT A



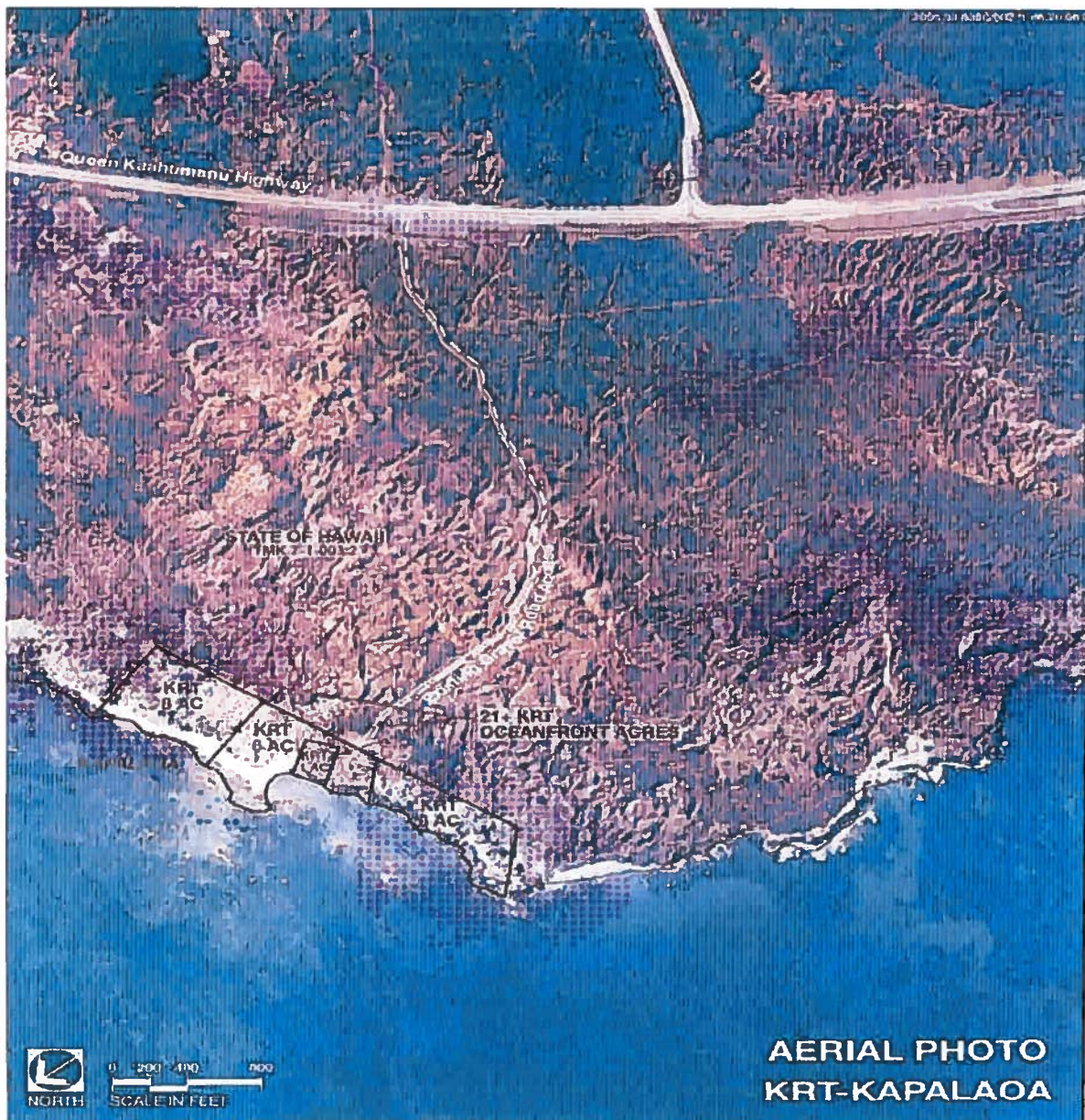


EXHIBIT A



EXHIBIT A



EXHIBIT A

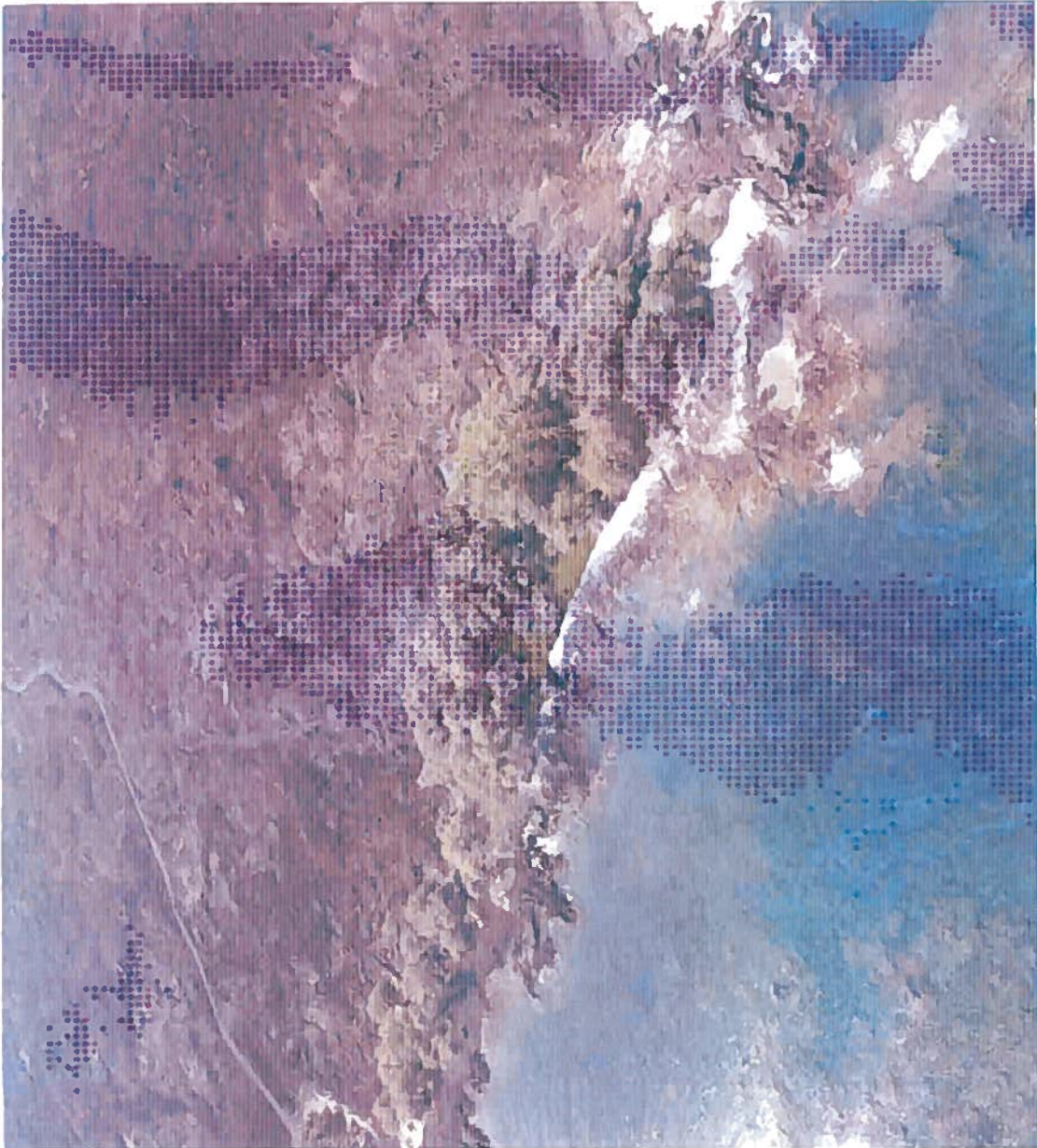


EXHIBIT A

LAND COURT SYSTEM		REGULAR SYSTEM	
Return by Mail ()	Pickup (X)	To:	
This document contains 8 pages (including this page)			
Tax Key: (3) 7-1-03:002			

GRANT OF VEHICLE ACCESS RIGHTS

GRANTOR: STATE OF HAWAII
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

GRANTEE: DEPARTMENT OF LAND AND NATURAL RESOURCES
1151 Punchbowl Street, Room 13C
Honolulu, Hawaii 96813

EXHIBIT B

GRANT OF LIMITED VEHICLE ACCESS RIGHTS

THIS INDENTURE, made this _____ day of _____, 2011,
by the STATE OF HAWAII, through its Director of Transportation, hereinafter referred to as the
"GRANTOR", and the STATE OF HAWAII, by its Board of Land and Natural Resources,
whose principal place of business and mailing address is 1151 Punchbowl Street, Room 130,
Honolulu, Hawaii 96813, hereinafter referred to as the "GRANTEE".

WITNESSETH THAT:

WHEREAS, the GRANTOR is the owner of the Queen Kaahumanu Highway as shown
on the Right-of-Way Map for the project known as KAILUA-KAWAIIAE ROAD, Project No.
19 RC-01-71, North Kona, Island of Hawaii, Hawaii, (hereafter referred to as the "Project"),
filed in the Highways Division, Department of Transportation, State of Hawaii, dated
September 19, 1972 and also along Tax Map Key No. (3) 7-1-03:002; and

WHEREAS, the GRANTEE is the owner of property identified by Tax Map Key No.
(3) 7-1-03: 002, and

WHEREAS, the GRANTEE desires vehicle access rights from Tax Map Key No.
(3) 7-1-03:002 onto Queen Kaahumanu Highway; and

WHEREAS, the GRANTOR is willing to allow GRANTEE vehicle access rights for
egress and ingress over and across said BOUNDARY "1", more particularly described attached
hereto as Exhibit A, and shown on Exhibit B.

EXHIBIT B

NOW THEREFORE, the GRANTOR, for good and valuable consideration paid by the GRANTEE, the receipt whereof is hereby acknowledged, and pursuant to Section 264-13, Hawaii Revised Statutes, does hereby remise, release, give, grant and convey unto the GRANTEE, its successors, and assigns, vehicle access rights for egress and ingress to Queen Kaahumanu Highway, over and across BOUNDARY "1".

TO HAVE AND TO HOLD the same together with any and all rights, privileges and appurtenances, thereto belonging or appertaining to or held and enjoyed therewith, unto the GRANTEE, until the STATE OF HAWAII, Department of Transportation implements its plan to upgrade Queen Kaahumanu Highway to a high speed access controlled facility, once an alternate means of access is provided, direct access onto Queen Kaahumanu Highway will be restricted.

The GRANTEE hereby acknowledges that the conveyance by the GRANTOR of the limited vehicle access rights for ingress over and across BOUNDARY "1" has been made pursuant to the GRANTEE's request.

EXHIBIT B

IN WITNESSETH WHEREOF, the GRANTOR and GRANTEE have executed this
Instrument on the day and year first above written.

GRANTOR:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

By _____
Print Name: _____
Its: _____

GRANTEE:

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES

By _____
Print Name: _____
Its Chairperson of Board of Land and Natural Resources

APPROVED AS TO LEGALITY, FORM,
EXCEPTIONS, AND RESERVATIONS:

Deputy Attorney General

Dated: _____

Deputy Attorney General

Dated: _____

EXHIBIT B

DESCRIPTION

KAILUA-KAWAIHAE ROAD
Project No. 19 BC-01-71
Boundary "1"

Being a section of the North right-of-way boundary of Kailua-Kawaihae Road, Project No. 19 BC-01-71,
and along Addition to State Park Reserve, Executive Order 4161

Situated at Puuanahulu, North Kona, Island of Hawaii, Hawaii

Beginning at the Northeast end of this right-of-way boundary and on the North side of Kailua-Kawaihae Road, Project No. 19 BC-01-71, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPULU" being 54,666.20 feet North and 28,186.31 feet East, thence running by azimuths measured clockwise from True South:

1. Along the North side Kailua-Kawaihae Road, Project No. 19 BC-01-71, on a curve to the left with a radius 14,250.04 feet, the chord azimuth and distance being: 45° 44' 05.16" 34.00 feet to a point on the North boundary of this right-of-way.

Vehicle access shall be permitted into and from Kailua-Kawaihae Road, Project No. 19 BC-01-71, over and across Course 1 of the above described Boundary "1".

2153 North King Street
Suite 200
Honolulu, Hawaii 96819
October 28, 2010



BELT COLLINS HAWAII LTD.



Licensed Professional Land Surveyor
Certificate Number 12972

EXHIBIT A

1

EXHIBIT B

